

Appl. No. 10/713,759

Amdt. Dated October 25, 2005

Reply to Office Action of August 4, 2005

REMARKS

This is a full and timely response to the non-final Office action mailed August 4, 2005. Reexamination and reconsideration in view of the foregoing amendments and following remarks is respectfully solicited.

Claims 1-22 and 24 are pending in this application, with Claims 1, 8, and 18 being the independent claims. Claims 8, 19, and 20 have been amended herein. No new matter is believed to have been added.

Applicants wish to gratefully acknowledge the indication that Claims 18, 21, 22, and 24 are allowed, and that Claims 10, 11, 13, 14, and 17 are directed to allowable subject matter.

Objection to the Specification

The specification has been amended herein to accurately recite that Application Serial No. 10/460,008 was issued as U.S. Patent No. 6,774,338 on August 10, 2004. Hence, reconsideration and withdrawal of the objection is requested.

Rejections Under 35 U.S.C. § 112, second paragraph

Claims 8-17, 19, and 20 were rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite. Specifically, independent Claim 8 included a minor informality, and dependent Claims 19 and 20 were allegedly inconsistent with independent Claim 18.

In response, Applicant has cosmetically amended independent Claim 8 to correct the minor informality. As regards dependent Claims 19 and 20, these claims have also been cosmetically amended to further clarify the subject matter encompassed thereby. In particular, these claims now recited that the automated filler media source is manually controlled. This recitation is consistent with the description at least in paragraph [0031] which states that, whether the filler media is supplied manually or automatically, one hand can be used to manipulate the wand while the other hand is free to manipulate the filler media and/or control its supply to a work piece.

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In view of the foregoing, it is submitted that Claims 8-17, 19, and 20 all meet the requirements of 35 U.S.C. § 112, second paragraph, and withdrawal of the rejections thereof are respectfully requested.

Rejections Under 35 U.S.C. § 103

Claims 1, 2, 5, 6, 8, 9, 12, 15, and 16 were rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Japan Patent No. 9-103896 (Yasuda), U.S. Patent No. 4,564,736 (Jones et al.), and U.S. Patent Application Publication No. 2005/0056628 (Hu). These rejections are respectfully traversed.

Hu is based on Application Serial No. 10/665,028, which was filed on September 16, 2003, and published on March 17, 2005. The instant application was filed on November 13, 2003. Thus, Hu qualifies as prior art only under 35 U.S.C. § 102(e).

35 U.S.C. 103(c)(1) now reads as follows:

“(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

Moreover, guidelines promulgated to implement 35 U.S.C. § 103(c)(1) state that “[a]pplications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.” See “Guidelines Setting Forth a Modified Policy Concerning the Evidence of Common Ownership, or an Obligation of Assignment to the Same Person, as Required by 35 U.S.C. 103(c),” 1241 OG 96 (Dec. 26, 2000).

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Based on the above, Applicant's representative provides herein the following statement: the instant application (Application Serial No. 10/713,759) and U.S. Patent Application Publication No. 2005/0056628 were, at the time the invention of Application Serial No. 10/713,759 was made, owned by Honeywell International, Inc.

In view of the foregoing, and without conceding to any of the alleged characterizations thereof that were proffered in the Office action, Hu, which was cited for at least its alleged teaching of a plurality of filler media flow passages spaced around an aperture, cannot be used to preclude patentability of any of Claims 1, 2, 5, 6, 8, 9, 12, 15, and 16 under 35 U.S.C. § 103. Accordingly, the Examiner is respectfully requested to withdraw the rejection of Claims 1, 2, 5, 6, 8, 9, 12, 15, and 16.

In view of the foregoing, Applicants respectfully solicit reconsideration and withdrawal of the § 103 rejections.

#### Conclusion

Based on the above, independent Claims 1, 8, and 18 are patentable over the citations of record. The dependent claims are also submitted to be patentable for the reasons given above with respect to the independent claims and because each recite features which are patentable in its own right. Individual consideration of the dependent claims is respectfully solicited.

The other art of record is also not understood to disclose or suggest the inventive concept of the present invention as defined by the claims.

Hence, Applicants submit that the present application is in condition for allowance. Favorable reconsideration and withdrawal of the objections and rejections set forth in the above-noted Office Action, and an early Notice of Allowance are requested.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the below-listed number.

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If for some reason Applicant has not paid a sufficient fee for this response, please consider this as authorization to charge Ingrassia, Fisher & Lorenz, Deposit Account No. 50-2091 for any fee which may be due.

Respectfully submitted,

INGRASSIA FISHER & LORENZ

Dated: 10/25/05

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